IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2742 OF 2005

Vijaymala V. Deokar : Petitioner

V/s.

Suyojana Co-operative Housing Society Ltd. & Ors. : Respondents

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Ms L.A. Munim with Mr.H.K.Bhalerao i/b. M/s.Rajesh Kothari & Co., for the petitioner.

None present for the respondents.

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CORAM : S.A. BOBDE, J.

August 23, 2005.

P.C.:

1. The petitioner has challenged the order of the Maharashtra State Co-operative Appellate Court upholding the contention of the respondent-society that there was no permanent licence created in the petitioner's favour. The Appellate Court has thereby upheld the order of the Co-operative Court allowing the society's dispute.

2. The society filed a dispute for a declaration and injunction to the effect that the petitioner has no right

to make any construction on the open space adjoining the plot allotted to her. The society also prayed for handing over possession of the said open space to it.

3. The area in dispute is a small area adjoining the petitioner's premises which are part of the society's premises. The petitioner sought permission for developing the open area admeasuring 11,530 sq. ft. for developing a beautiful garden for the benefit of all the members of the society. This permission was granted to the petitioner. The permission at exh.'B' is only for developing a beautiful garden. The society made it clear that it would be open for use for all the members.

4. Apparently, the petitioner constructed a permanent compound wall, claimed to have renovated an old temple and constructed a pool with a fountain. All this has admittedly been done without obtaining permission of the Pune Municipal Corporation. The trial Court, therefore, allowed the dispute filed by the society.

5. The petitioner carried an appeal before the appellate Court. The appellate Court upheld the order of the Co-operative Court partly and held that the letter dated 14.11.1979 granting permission to the petitioner to

develop a beautiful garden did not create an irrevocable licence as contended. The appellate Court has also found that the petitioner was not permitted to make any construction for her exclusive use and possession. The appellate Court also came to the conclusion on the basis of evidence that the temple in question admeasuring 20′ x 8′ which the petitioner claims to have renovated was, in fact, constructed by the petitioner and that, in any case, the Municipal Rules require the space to be kept open. Having regard to these circumstances, the appellate Court has directed delivery of possession of the area in question in the situation as it is to the respondents within a period of 15 days.

6. The learned counsel for the petitioner relied on the Easements Act and submitted that a licence accompanied by a permission to construct amounts to a permanent licence. There is no merit in this contention in view of the licence granted to the petitioner in this case which is without any permission to construct.

7. In the result, the petition is dismissed.

Sd/-

S.A. BOBDE, J.